IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1938 OF 2004
IN
APPEAL (L) NO.374 OF 2004
IN
INSOLVENCY PETITION NO.113 OF 2002

Gafoor Lalif Lakha & Anr. .. Appellants.
V/s.
Mohanlal L. Talreja & Others .. Respondents.

Mr.S. Purohit i/b. Ashok Purohit for the appellants.
Mr.Sanjay Jain i/b. Ramesh Jain for the respondents.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 3RD SEPTEMBER, 2004.

P.C. :

Heard.

2. The applicants have not been candid and honest in disclosure of facts. The appeal preferred by the applicants-appellants suffers from delay of 108 days. In this notice of motion seeking condonation of delay it is stated that exparte order dated March 16, 2004 came to be passed without giving proper hearing and chance to the appellants to defend the case; that on March 18, 2004 the appellants came to know of the order dated March 16, 2004; that the appellants immediately consulted their lawyer to take necessary steps in the matter; that the appellants

are of old age and they did not properly follow up with the advocate; that the said advocate returned the papers and then the appellants contacted the present advocate and instructed him to take necessary steps to set aside the order dated March 16, 2004 and the present advocate applied for certified copy of the order dated March 16, 2004 on June 29, 2004.

3. The aforesaid facts set up in the affidavit in support of the notice of motion are apparently vague and incorrect. It is so because in the memo of appeal it is stated that the advocate for the appellants was held up in another court. It is thus clear that the appellants-applicants were served with the notice of insolvency petition and they had engaged advocate. In the affidavit in support of the notice of motion it is stated that the appellants came to know about the order dated March 16, 2004 on March 18, 2004. Even if it is accepted, the steps taken thereafter do not show any diligence on the part of the appellants. Having come to know about the order dated March 16, 2004 on March 18, 2004, the appellants have not disclosed the date on which they contacted their lawyer for taking necessary steps in the matter. Though it is stated that the advocate returned the papers, the date on which the papers

were returned is not mentioned. When did the appellants contact the present advocate is not stated in the affidavit in support of the notice of motion. The respondents have denied that any application for certified copy was made by the appellants on June 29, 2004. The appellants could not show that in fact the application for certified copy of the order was made on June 29, 2004.

4. It is true that while considering the application for condonation of delay, the court does not expect the appellants to explain day-to-day delay. However, the cause must be sufficient that prevented the appellants in filing the appeal in time. The affidavit in support of the notice of motion lacks in making out sufficient cause.

5. All in all we are satisfied that the delay of 108 days in filing the appeal is not explained.

6. The notice of motion is, accordingly, dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)